

CFPB Proposes Rule Removing Medical Bills From Credit Reports

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On June 11, 2024, the Consumer Financial Protection Bureau (CFPB) issued a proposed rule that would generally prohibit lenders from considering medical debt information when determining a consumer's eligibility for credit, and also would keep most medical debt information off of consumer reports provided to creditors.

The CFPB kicked off the rulemaking in September 2023, and the proposal comes on the heels of several state laws prohibiting inclusion of medical debt information on consumer reports – including, for example, a law passed in Colorado and a law being considered in California.

The proposal also follows passage of the No Surprises Act, which caps amounts consumers are required to pay for certain types of medical bills and has been the subject of CFPB commentary. Both the No Surprises Act and the CFPB proposal fit into a broader effort by the Biden administration to reduce the burden of medical debt on Americans, including to reduce the role that medical debt plays in determining whether Americans can access credit. It therefore comes as no surprise that Vice President Kamala Harris announced the issuance together with CFPB Director Rohit Chopra.

Proposed rule seeks to reverse existing policy and push industry

In 2003, Congress passed the Fair and Accurate Transactions Act (FACT Act), which, among other things, amended the Fair Credit Reporting Act (FCRA) to restrict a creditor's ability to obtain or use medical debt information when making credit eligibility determinations. Federal agencies subsequently issued a regulatory exception to that FCRA provision, under Regulation V, which generally allowed lenders to use medical debt information when making credit determinations if certain conditions were met.

The proposal aims to amend Regulation V to:

- Remove that exception, currently found at 12 CFR 1022.30(d), which the CFPB emphasizes as “neither warranted nor consistent with the FACT Act's purpose of protecting the privacy of consumers' medical information.”
- Restrict the circumstances under which consumer reporting agencies may include medical debt information on consumer reports furnished to creditors for use in making credit eligibility decisions.

Under the proposal, creditors also would be prohibited from taking medical devices as collateral for a loan or repossessing medical devices, like wheelchairs or prosthetic limbs. According to the CFPB, the proposal would ensure that “consumers sensitive medical debt information would be protected, and consumers would no longer be unfairly penalized in the credit market for having medical debt.” Underscoring this point, in the press release accompanying the proposal, the CFPB indicates that “Americans with medical debt on their credit reports will see their credit scores rise by 20 points, on average,” if the proposed rule is finalized.

Medical debt information relates solely to debts owed to medical or healthcare providers

The CFPB proposes to define “medical debt information” to explain the types of medical debts that a creditor would not be able to consider in making credit eligibility decisions if the exception, referred to above, were removed from Regulation V, and to clarify that a consumer reporting agency would be limited from including such information on consumer reports furnished to creditors. Specifically, the proposal would define “medical

debt information” as “medical information that pertains to a debt owed by a consumer to a person whose primary business is providing medical services, products, or devices, or to such person’s agent or assignee of such medical services, products or devices.” This would include current and past medical bills, from medical or healthcare providers, that are not past due or that have been paid.

Importantly, however, the proposal excludes debt owed to third-party creditors from its definition of “medical debt information.” Therefore, using, or including on consumer reports, information about debts for medical care charged to credit cards – including credit cards solely intended to be used to pay for medical services – would be permissible under the rule.

Looking ahead: Proposal could provide immediate relief but increase long-term costs

According to a [recent CFPB report](#), 15 million Americans have \$49 billion worth of outstanding medical bills appearing in the credit reporting system, which may affect their ability to qualify for credit or receive a reasonable rate. Because higher interest rates can be debilitating for many people already in debt, the CFPB suggests that the proposed rule would provide immediate relief by helping people qualify for credit with better terms.

The rule, however, also could have unintended negative consequences. For example, if medical debt is broadly banned from consumer reports or consideration by creditors, more people may leave bills from their healthcare providers unpaid. This could result in increased costs across the healthcare system and/or more physicians and providers requiring upfront payments to protect their interests. Patients unable to pay in cash upfront may resort to paying by credit card – non-payment of which could, in any event, result in negative information being included on their consumer report and ultimately considered by creditors.

The CFPB is requesting comments on the proposed rule by August 12, 2024.

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Key Contacts

Michelle L. Rogers Washington, DC	mrogers@cooley.com +1 202 776 2227
Christine Thebaud Washington, DC	cthebaud@cooley.com +1 202 776 2095

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